



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms O Ba**

**v**

**Royal National Orthopaedic Hospital NHS Trust**

## OPEN PRELIMINARY HEARING

**COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals**

**“This has been a remote hearing not objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”**

**Heard at:** Watford in person and by CVP

**On:** 16 August 2021

**Before:** Employment Judge Alliot sitting alone

### **Appearances**

**For the Claimant:** In person (by CVP)

**For the Respondent:** Mr Ben Jones (Counsel)

## JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim of disability discrimination is dismissed upon withdrawal.
2. The claimant's claim for breach of contract has no reasonable prospect of success and is struck out.
3. The claimant's claims of racial discrimination as regards Ernest Anyadioha and Francis Creppy have no reasonable prospects of success and are struck out.

## REASONS

1. The claimant was employed by the respondent on 1 October 2018. On 9 December 2019 she resigned and the effective date of termination of her employment was 1 March 2020.
2. By a claim form presented on 28 May 2020, the claimant brings complaints of disability and race discrimination and a claim for other payments. This has been coded Breach of Contract on the file.

### Disability discrimination

3. In a document sent to the tribunal on 16 August 2021, the claimant has set out as follows:-

“As I am now advised, I appreciate that the claim of “disability discrimination “ I included, which was of action against my colleague, Hardish Harg, should be omitted from my claim.”

4. The claimant confirmed before me that she wished to withdraw her claim of disability discrimination. As such, that claim is dismissed upon withdrawal.

### Race discrimination

5. On 17 October 2020, Employment Judge Johnson ordered the claimant to provide the further information requested in paragraphs 12, 14, 16 and 19 of the response.
6. On 26 October 2020, the claimant provided a document in compliance with that order. Paragraphs 1 and 2 complain of poor treatment of members of the claimant’s staff, namely Mr Ernest Anyadioha and Mr Francis Creppy. In my judgment, those claims stand no reasonable prospect of success and are struck out.

### Breach of contract

7. The claimant confirmed to me that upon her resignation she worked her contractual notice period and was paid.
8. The claimant confirmed to me that her job title was Medical Resourcing Manager and she was paid at Band 7.
9. In her claim form the claimant values the breach of contract claim at £9,000. It would appear that the claimant puts her claim as follows: She had a right to ask for job evaluation and feels that due to her responsibilities she should have been promoted with an altered job title and being placed in a higher salary band.
10. There was no concluded contract of employment at the higher rate of pay.
11. In my judgement, characterising this complaint as a breach of contract stands no reasonable prospect of success and this claim is struck out.

**Whistleblowing detriment**

- 12. There is a two-paragraph section of the claimant's further information entitled "Whistleblowing Detriment". In discussion with the claimant she suggested that the information disclosed was contained in a grievance dated February 2020 and that the detriment she suffered, in so far as it can be identified, occurred in April 2020 after her employment ceased.
- 13. In my judgment, the original claim form did not contain a claim of detriment for making a protected disclosure (whistleblowing). I explained to the claimant that if she wished to bring such a claim she would have to make an application to amend her claim setting out what information she disclosed, to whom, when, how, why she says the disclosure was in the public interest and what the disclosure tended to show. I referred the claimant to section 43B of the Employment Rights Act.

**Race discrimination**

- 14. The claimant will be given a second opportunity to particularise her claim. I record here that I did not make a decision on the respondent's application for a deposit order which can be renewed if required.

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Employment Judge Alliot

Date: ...25<sup>th</sup> August 2021.....

Sent to the parties on: ..10<sup>th</sup> Sept 2021.  
THY

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For the Tribunal Office